

State of Legal Residence/Domicile

May I change my state of legal residence/domicile?

Yes, the formula for changing your state of legal residence/domicile is simply stated as follows: physical presence in the new State with the simultaneous intent of making it your permanent home and abandonment of the old State of legal residence/domicile.

In most cases, you must actually reside in the new State at the time you form the intent to make it your permanent home. Such intent must be clearly established and the physical actions described above indicate your intent.

What actions should I take if I change my domicile?

How do I prove I changed my domicile?

If you change your state of domicile, you may have to prove it.

One or more of these may prove your intent that a particular state is your domicile:

1. Expressed intent, oral or written and physical presence, past and present (including duration) [Prerequisite to establishing domicile]
2. Voter registration
3. Vehicle registration
4. Motor vehicle operator's permit
5. Location of bank and investment accounts
6. Explanations for temporary changes in residence
7. Submission of DD Form 2058, State of Legal Residence Certificate (Change of domicile form) <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2058.pdf>
8. Payment of taxes (income and personal property)
9. Payment of nonresident tuition to institutions of higher education
10. Declarations of residence on legal documents such as wills, deeds, mortgages, leases, contracts, insurance policies, and hospital records
11. Declarations of domicile in affidavits or litigation

Generally, unless you have taken at least some of these steps, it is doubtful that your State of legal residence/domicile has changed. Failure to resolve any doubts as to your State of legal residence/domicile may adversely impact certain legal privileges which depend on legal residence/ domicile including among others, eligibility for resident tuition rates at State universities, eligibility to vote or be a candidate for public office, and eligibility for various welfare benefits. If you have any doubt with regard to your State of legal residence/domicile, you should your Legal Assistance attorney for legal advice before deciding to change your domicile.

What actions should I take if I change my domicile?

If you change your state of legal residence/domicile, you should take these actions:

- a. You must be consistent. If you are a legal resident of State A, then you shouldn't keep your driver's license from State B or vote in State C. Inconsistency is probably the single biggest mistake that people make in this area.
- b. You should adjust your state income tax withholding by filing DD Form 2058, State of Legal Residence Certificate with your local military finance office.
<http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2058.pdf>
- c. There is no need to publish a notice or file any documents with the state Attorney General's Office or anything like that.
- d. If both the old and new states have an income tax, and if you moved on any day other than January 1, then you will have to file part-year returns in both states. For the first state, you report the income you had before moving to the new state. For the new state, you report the income earned after becoming a resident of the new state.

Should I update my military records to reflect my correct domicile?

Yes, the rules for changing your home of record are not the same as rules that apply when your domicile changes. Unlike domicile, you can only change your home of record at a certain time, when you reenlist for example. Because some military personnel in administrative jobs have a tendency to think that home of record and domicile mean the same thing, service members sometimes are told that they cannot change their domicile unless they reenlist. This erroneous advice has, in some cases, resulted in the military withholding income from the pay of a service member for state income tax purposes and paying the amounts withheld, perhaps for a period of several years, to a state that is not entitled to receive that money.

How do I make sure I am paying the correct state income tax?

To make sure that your active duty military pay is being correctly withheld and paid to a state entitled to receive it, you must file a DD Form 2058, State of Legal Residence Certificate. <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2058.pdf>. Once filed, this certificate will go through channels to finance where it will be used to determine whether pay should be withheld from your income and, if so, how much should be withheld and to which state it should be paid. If you declare a change in your domicile on this certificate you should know that the military will notify the state which was your former domicile about your action. You should therefore be prepared to prove that your domicile has indeed changed as discussed above.

Do military orders establish my domicile?

No, being assigned in a state pursuant to military orders is not sufficient by itself to establish a new domicile. Being stationed somewhere is nothing more than mere physical presence, and mere physical presence is not enough. However, if you have the mental intent to make the state where you are stationed your domicile, then you have met the requirements.

How do I establish a new state of legal residence/domicile from overseas?

Generally, if you're overseas you have to go back to the U.S., establish physical presence in a new state and have the appropriate mental intent while you are physically present

there. There may be an exception to the physical presence requirement if you are changing your domicile due to a recent marriage.